IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 9195 OF 2001

Date: 25.11.2005

BETWEEN:

1. Y.V. Nagamohan and another

.... PETITIONER

And

1. The Commissioner, Municipal Corporation, Visakhapatnam, and another.

.... RESPONDENTS

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 9195 OF 2001

ORDER:

The petitioners are residents of Guntur town. Aggrieved by the unauthorized illegal construction made by the second respondent, the petitioners approached the first respondent for redressal, in vain. Therefore, they filed present writ petition seeking a declaration that the in action of the first respondent in not demolishing the unauthorized and illegal construction made by the second respondent in plot No.157 in M.V.P. Colony, Visakhapatnam as illegal and arbitrary. They also seek a consequential direction to the first respondent in similar terms.

In the counter affidavit filed, the Commissioner of the first respondent admits that the second respondent has contravened the building permission while leaving the front setback, rear setback on all sides. It is also stated that a notice was issued on 6.10.1999 to the second respondent to stop further construction, and aggrieved by the same, the second respondent filed O.S.No.3479 of 1999 for perpetual injunction.

A n *ex parte* decree was passed on 17.7.2000 restraining the Visakhapatnam Municipal Corporation from interfering with the peaceful possession and enjoyment of the suit schedule property including demolition of the same while under construction. Therefore, they could not take any action.

By reading the counter affidavit, it becomes clear that the second respondent filed a civil suit when the Corporation issued notice purportedly under Sections 42(1) and 43(1) of the A.P. Urban Areas (Development) Act, 1975. By reason of the decree the Corporation could not stop illegal construction. As the Corporation has admitted in the counter affidavit that the second respondent committed illegality in the construction of the residential portion, it shall be open to the Corporation to issue appropriate notice under Section 452 of Hyderabad Municipal Corporation Act, 1955, afford an opportunity of making representation to the second respondent, and take appropriate action in accordance with law. The *ex parte* decree passed by the Civil Court in O.S.No.3479 of 1999 does not prevent the Municipal Corporation in discharging its statutory duties.

The Writ Petition is accordingly disposed of. No costs.

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(**V.V.S. RAO, J.)**

25th November, 2005

Js.